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July 27, 2017

VIA ECF

Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, Adv. Pro. No. 08-01789 (SMB) – Profit Withdrawal Proceedings/Motion *in Limine* Number 3

Dear Judge Bernstein:

We are counsel to Irving H. Picard, as Trustee (“Trustee”) for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and the substantively consolidated chapter 7 estate of Bernard L. Madoff. We write to inform the Court of recent communications between the parties that bear on issues related to the Trustee’s Motion *in Limine* Number 3. ECF No. 14356. That motion, which is *sub judice*, sought to exclude the deposition testimony of Aaron Blecker or, in the alternative, to authorize a trial deposition of him (“Blecker Motion”).

One of the issues before the Court in the Blecker Motion is whether Mr. Blecker is available to testify at the hearing on profit withdrawals (“PW Hearing”). During the April 18, 2017 hearing on the Blecker Motion (the “Hearing”), Ms. Chaitman twice offered to provide a physician’s affidavit regarding Mr. Blecker. *See* ECF No. 15951 (“Hearing Tr.”) at 74 (“I will give you a doctor’s affidavit.”); Hearing Tr. at 81 (“I can get a doctor’s letter if you want that, Your Honor.”).

Since the Hearing, Ms. Chaitman has refused to provide a physician’s affidavit regarding Mr. Blecker. Ms. Chaitman claims that if the Court had wanted one, “[the Court] would have ordered it.” *See* Exhibit A (copies of June 22-26, 2017 Email chain between H. Chaitman and A. Vanderwal). Instead, Ms. Chaitman has indicated to the Trustee that Robert Blecker is available

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for a deposition. *See* Exhibit B (copy of May 8, 2017 Email from H. Chaitman to A. Vanderwal).

The Trustee is aware of no rule, procedure, or practice that permits a party to substitute witnesses at their whim. Nothing in the record demonstrates that Robert Blecker has any personal knowledge of the issues in dispute in the PW proceeding. Robert Blecker is not listed on Mr. Blecker's pretrial disclosures as a witness, ECF No. 14359-6, and discovery has long since closed. Ms. Chaitman has not moved to open discovery and there is no good cause to open it now. *See* Fed. R. Civ. P. 16(b)(4). In any event, Ms. Chaitman has yet to establish that Mr. Blecker is unavailable.

Because Ms. Chaitman's refusal to provide a doctor's note bears on issues raised in the Blecker Motion, the Trustee writes to inform the Court of these recent communications.

Respectfully submitted,

/s/ Seanna R. Brown

Seanna R. Brown
Partner

cc: Helen Chaitman, Esq.
David J. Sheehan, Esq.
Amy E. Vanderwal, Esq.